

REMARKS**Response to Claim Rejections Under 35 U.S.C. §112**

Claims 35-43 and 48 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner contends that claim 35 recites "the inner lumen" where previously a "main lumen" is set forth. However, line 13 of claim 35 recites "the inner lumen of the inner cannula" and the "main lumen" refers to the lumen in the outer cannula. See lines 9-10 which refers to "a main lumen extending within at least a portion of the outer cannula".

Applicants believe the Examiner is in error in this rejection and request that it be withdrawn.

Response to Claim Rejections Under 35 USC §102

The Examiner rejected claims 44-46 and 48 under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. No. 5,810,806. Applicants have carefully reviewed the portions of the '806 patent referred to by the Examiner but could find no teachings of every feature of claim. Specifically, the '806 reference fails to teach

a cutting loop at the distal end which is configured to rotate from a position within the probe member out of the cut out in the tubular sidewall to a position exterior to the elongated probe member, to move longitudinally in a direction generally parallel to the longitudinal axis exterior to the elongated probe member and to rotate from a position exterior to the elongated probe member into the elongated probe member through the cut out in the tubular side wall in a plane traversing the longitudinal axis.

The '806 patent does not disclose the cutting loop traveling parallel to the longitudinal axis of the probe member outside of the probe member and then rotating back into the probe member through the side opening. To clarify this issue applicants have amended claim 44 to require the cutting loop to be subjected to high frequency electrical power when rotating out of the probe member, along the exterior thereof and rotating back into the probe member to sever

a tissue sample from surrounding tissue. None of the embodiments described by the '806 patent shown this combination.

Response to Claim Rejections Under 35 USC §103

Claim 47 was rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,810,806 to Ritchart et al. as applied to claim 44 and further in view of U.S. Patent No. 5,947,964 to Eggers et al. Claim 47 calls for the tissue penetrating distal tip to have an electrically conducting distal cutting wire. The distal end of the device shown in the '964 patent is subjected to electrical power but it has no wire extending over the distal end as set forth in claim 47 above. Moreover, the '964 patent fails to make up for the features not taught by the '806 patent, so the combination proposed by the Examiner fails to teach all the features of the rejected claim.


Allowance

The applicants note with appreciation the Examiner's indication that claims 35-43 and 48 are directed to patentable subject matter.

Conclusion

Applicants believe that the pending claims are directed to patentable subject matter. Reconsideration and an early allowance of the pending claims are earnestly solicited.

Respectfully submitted,

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